AGREEMENT
IN THE FORM OF AN EXCHANGE OF LETTERS
ON THE TAXATION OF SAVINGS INCOME AND THE PROVISIONAL APPLICATION THEREOF

the Republic of Croatia - Sint Maarten

A. Letter from the Republic of Croatia

Madam/Sir,

I have the honour to refer to the texts of respectively the "Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and (Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments", the "Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and (the EU Member State, other than Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments", the "Convention between the Kingdom of the Netherlands in respect of Aruba and (the EU Member State, other than Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments" and the "Convention between the Kingdom of the Netherlands in respect of Aruba and (Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments", that resulted from the negotiations with the Netherlands Antilles and Aruba on a Savings Tax Agreement, and that were annexed, respectively as Annex I, II, III and IV, to the Outcome of Proceedings of the High Level Working Party of the Council of Ministers of the European Union of 12 March 2004 (doc. 7660/1/04 REV 1 FISC 68 + COR 1).

In view of the above mentioned texts I have the honour to propose to you the "Convention concerning the automatic exchange of information regarding savings income in the form of interest payments" as contained in Appendix 1 to this letter, and our mutual undertaking to comply at the earliest possible date with our internal constitutional formalities for the entry into force of this Convention and to notify each other without delay when such formalities are completed.

Pending the completion of these internal procedures and the entry into force of this "Convention concerning the automatic exchange of information regarding savings income in the form of interest payments", I have the honour to propose to you that the Republic of Croatia and the Kingdom of the Netherlands, in respect of Sint Maarten, apply this Convention provisionally, within the framework of our respective domestic constitutional requirements, as from the date of accession of the Republic of Croatia to the European Union.

I have the honour to propose that, if the above is acceptable to your Government, this letter and your confirmation shall together constitute an Agreement between the Republic of Croatia and the Kingdom of the Netherlands, in respect of Sint Maarten.

Please accept, Madam/Sir, the assurance of our highest consideration,

For the Republic of Croatia

Minister of Finance

Done at Zagreb, on 3.6.2013, in the English language in three copies.

B. Letter from the Kingdom of the Netherlands, in respect of Sint Maarten

Sir,

I have the honour to acknowledge receipt of your letter of 3 June 2013, which reads as follows:

"Sir,

I have the honour to refer to the texts of respectively the "Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and (Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments", the "Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and (the EU Member State, other than Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments", the "Convention between the Kingdom of the Netherlands in respect of Aruba and (the EU Member State, other than Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments" and the "Convention between the Kingdom of the Netherlands in respect of Aruba and (Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments", that resulted from the negotiations with the Netherlands Antilles and Aruba on a Savings Tax Agreement, and that were annexed, respectively as Annex I, II, III and IV, to the Outcome of Proceedings of the High Level Working Party of the Council of Ministers of the European Union of 12 March 2004 (doc. 7660/1/04 REV 1 FISC 68 + COR 1).

In view of the above mentioned texts I have the honour to propose to you the "Convention concerning the automatic exchange of information regarding savings income in the form of interest payments" as contained in Appendix 1 to this letter, and our mutual undertaking to comply at the earliest possible date with our internal constitutional formalities for the entry into force of this Convention and to notify each other without delay when such formalities are completed.

Pending the completion of these internal procedures and the entry into force of this "Convention concerning the automatic exchange of information regarding savings income in the form of interest payments", I have the honour to propose to you that the Republic of Croatia and the Kingdom of the Netherlands, in respect of Sint Maarten, apply this Convention provisionally, within the framework of our respective domestic constitutional requirements, as from the date of accession of the Republic of Croatia to the European Union.

I have the honour to propose that, if the above is acceptable to your Government, this letter and your confirmation shall together constitute an Agreement between the Republic of Croatia and the Kingdom of the Netherlands, in respect of Sint Maarten.

Please accept, Sir, the assurance of our highest consideration,"

I am able to confirm that Sint Maarten is in agreement with the contents of your letter.

Please accept, Sir, the assurance of my highest consideration,

For the Kingdom of the Netherlands, in respect of Sint Maarten

KABINET VAN DE GEVOLMACHTIGDE MINISTER VAN SINT MAARTEN • DEN HAAG •

Done at The Hague, on 29th of July '13, in the English language in three copies.

CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS, IN RESPECT OF SINT MAARTEN, AND THE REPUBLIC OF CROATIA CONCERNING THE AUTOMATIC EXCHANGE OF INFORMATION REGARDING SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS

WHEREAS:

1. Article 17(2) of Directive 2003/48/EEC ("the Directive") of the Council of the European Union ("the Council") on taxation of savings income provides that Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive from January 1, 2005, provided that:
   - the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra from that same date apply measures equivalent to those contained in the Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;
   - all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that date automatic exchange of information in the same manner as is provided for in Chapter II of the Directive, or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12;

2. On 19 July 2004 (Council Decision 2004/587/EC) the Council amended the date of application of the Directive from 1 January 2005 to 1 July 2005;

3. On 24 June 2005, the Council:

- took note that the 25 Member States, 5 European countries (Andorra, Liechtenstein, Monaco, San Marino, Switzerland), 3 Crown Dependencies (Guernsey, Isle of Man, and Jersey), and 7 dependent or associated territories in the Caribbean (Netherlands Antilles, Aruba, Anguilla, British Virgin Islands, Cayman Islands, Montserrat, Turks & Caicos Islands) have confirmed that they apply the agreed savings tax measures from 1 July 2005 (green light);

- adopted the "Green light note" (Doc. 10038/05 FISC 69) which triggered the application, by all 40 treaty partners concerned, of the agreed savings tax measures from 1 July 2005;

- authorised the Council Secretariat to share the "Green light note" and the information concerning the bilateral savings tax agreements and the Savings Tax Directive with the relevant third countries and territories and the public.";

4. Sint Maarten is not within the EU fiscal territory but is, for purposes of the Directive, an EU associated territory and as such is not bound by the terms of the Directive. However, the Kingdom of the Netherlands, in respect of Sint Maarten, on the basis of an arrangement between Sint Maarten and the Netherlands, is willing to enter into agreements with the Member States of the EU to apply a withholding tax on the same terms as are contained in Articles 11 and 12 of the Directive during the transitional period defined in Article 10 thereof, and, after expiration of the transitional period, to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive;

5. The arrangement between Sint Maarten and the Netherlands, as stated in the previous paragraph, is contingent on the adoption by all the Member States of the laws, regulations and administrative provisions necessary to comply with the Directive, and on the requirements of Article 17 of the Directive being met;

6. Through this Convention, Sint Maarten agrees to apply the provisions of the Directive, subject to what is otherwise agreed herein, in regard of Beneficial Owners that are residents of the Republic of Croatia and the Republic of Croatia agrees to apply the Directive in regard to Beneficial Owners that are residents of Sint Maarten.

The Government of the Kingdom of the Netherlands, in respect of Sint Maarten, and the Government of the Republic of Croatia, desiring to conclude a Convention which enables savings income in the form of Interest Payments made in one of the Contracting States to Beneficial Owners who are individuals resident in the other Contracting State, to be made subject to effective taxation in accordance with the laws of the latter Contracting State, in conformity with the Directive and with the intentions of the Contracting States as laid down herein above, have agreed as follows:

Article 1

General Scope

1. This Convention shall apply to interest paid by a Paying Agent established within the territory of one of the Contracting States with a view to enable savings income in the form of Interest Payments made in one Contracting State to Beneficial Owners who are individuals resident for tax purposes in the other Contracting State to be made subject to effective taxation in accordance with the laws of the latter Contracting State.

2. The scope of this Convention shall be limited to taxation of savings income in the form of Interest Payments on debt claims, to the exclusion, inter alia, of the issues relating to the taxation of pension and insurance benefits.

3. As regards the Kingdom of the Netherlands, this Agreement shall apply only to Sint Maarten.

Article 2

Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a) the terms "a Contracting State" and "the other Contracting State" mean: the Kingdom of the Netherlands, in respect of Sint Maarten, or the Republic of Croatia as the context requires;

b) the term "Sint Maarten" means: the part of the Kingdom of the Netherlands, which is situated in the Caribbean area and consists of the territory of Sint Maarten, including its territorial sea and any area beyond and adjacent to its territorial sea within which the Kingdom of the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights, but excluding the part thereof relating to Saba;

c) the "contracting party" being a Member State of the European Union means: the Republic of Croatia;

d) the term "Directive" means Directive 2003/48/EC of the Council of the European Union of 3 June 2003 on taxation of savings income in the form of interest payments, as applicable at the date of signing this Convention;

e) the term "Beneficial Owner(s)" means the Beneficial Owner(s) according to Article 2 of the Directive;

f) the term "Paying Agent(s)" means the Paying Agent(s) according to Article 4 of the Directive;

g) the term "Competent Authority" means:

   i) in the case of Sint Maarten: the Minister of Finance or his authorised representative;
   ii) in the case of the Republic of Croatia: the Competent Authority of that State according to Article 5 of the Directive;

h) the term “Interest Payment(s)” means the Interest Payment(s) according to Article 6, due account being taken of Article 15, of the Directive;

i) any term not otherwise defined herein shall have the meaning given to it in the Directive.

2. For the purposes of this Convention, in the provisions of the Directive to which this Convention refers, instead of “Member States” has to be read: Contracting States.

Article 3

Identity and residence of beneficial owners

Each Contracting State shall, within its territory, adopt and ensure the application of the procedures necessary to allow the Paying Agent to identify the Beneficial Owners and their residence for the purpose of the Articles 4 to 6. These procedures shall comply with the minimum standards established in Article 3, paragraph 2 and 3 of the Directive, with the provision, that, in relation to subparagraphs 2.a) and 3.a) of that Article, the identity and residence of the Beneficial Owner shall be established on the basis of the information which is available to the Paying Agent by virtue of the application of the relevant provisions of the law and regulations of the Contracting State where the Paying Agent is established. However, existing exemptions or dispensations, if any, provided on request to Beneficial Owners resident in the Republic of Croatia under these provisions shall cease to apply and no further exemptions or dispensations of this nature shall be provided to such Beneficial Owners.

Article 4

Automatic exchange of information

1. The Competent Authority of the Contracting State where the Paying Agent is established, shall communicate the information referred to in Article 8 of the Directive to the Competent Authority of the other Contracting State of residence of the Beneficial Owner.

2. The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the tax year of the Contracting State of the Paying Agent, for all Interest Payments made during that year.

3. Information exchange under this Convention shall be treated by the Contracting States in a manner consistent with the provisions of Article 16 of Directive 2011/16/EU.

Article 5
Transitional provisions

1. During the transitional period referred to in Article 10 of the Directive, where the Beneficial Owner is resident in the Republic of Croatia and the Paying Agent is resident in Sint Maarten, Sint Maarten shall levy a withholding tax on Interest Payments at a rate of 35%. During this period, Sint Maarten shall not be required to apply the provisions of Article 4. It shall, however, receive information from the Republic of Croatia in accordance with that Article.

2. The Paying Agent shall levy the withholding tax in the manner as described in Article 11, paragraphs 2 and 3 of the Directive.

3. The imposition of withholding tax by Sint Maarten shall not preclude the Republic of Croatia from taxing the income in accordance with its national law.

4. During the transitional period, Sint Maarten may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 4, paragraph 2, of the Directive, established in the Republic of Croatia shall be considered the Paying Agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated in accordance with the last subparagraph of that paragraph.

5. At the end of the transitional period, Sint Maarten shall be required to apply the provisions of Article 4 and shall cease to apply the withholding tax and the revenue sharing provided for in Article 5 and Article 6. If, during the transitional period, Sint Maarten elects to apply the provisions of Article 4, it shall no longer apply the withholding tax and the revenue sharing provided for in Article 5 and Article 6.

Article 6

Revenue sharing

1. Sint Maarten shall retain 25% of the revenue of the withholding tax mentioned in Article 5, paragraph 1, and transfer 75% of the revenue to the Republic of Croatia.

2. If Sint Maarten levies withholding tax in accordance with Article 5, paragraph 4, it shall retain 25% of the revenue and transfer 75% to the Republic of Croatia of the revenue of the withholding tax levied on interest payments made to entities referred to in Article 4, paragraph 2, of the Directive, established in the Republic of Croatia.

3. Such transfers shall take place at the latest within a period of six months following the end of the tax year of Sint Maarten.

4. Sint Maarten shall take the necessary measures to ensure the proper functioning of this revenue-sharing system.

Article 7

Exceptions to the withholding procedure

1. Sint Maarten shall provide for one or both of the procedures of Article 13, paragraph 1, of the Directive in order to ensure that the Beneficial Owners may request that no tax be withheld.

2. At the request of the Beneficial Owner, the Competent Authority of his Contracting State of residence for tax purposes shall issue a certificate in accordance with Article 13, paragraph 2, of the Directive.

Article 8

Elimination of double taxation

The Republic of Croatia shall ensure the elimination of any double taxation which might result from the imposition of the withholding tax referred to in Article 5, in accordance with the provisions of Article 14, paragraphs 2 and 3, of the Directive or will provide a refund of the withholding tax.

Article 9

Other withholding taxes

The Convention shall not preclude the Contracting States from levying other types of withholding tax than that referred to in Article 5 in accordance with their national laws or double-taxation conventions.

Article 10

Transposition

Before the date of accession of the Republic of Croatia to the European Union the Contracting States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Convention.

Article 11

Annex

The text of Article 16 of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, to which this Convention refers, is appended as Annex to this Convention, of which it forms an integral part.

Article 12
Entry Into Force

This Convention shall enter into force on the last day of the first month following the later of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect from the date of accession of the Republic of Croatia to the European Union.

Article 13
Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of three years from the date of its entry into force. In such event the Convention shall cease to have effect for periods beginning after the end of the calendar year in which the notice of termination has been given.

Done in the English language.

For the Republic of Croatia

For the Kingdom of the Netherlands,
in respect of Sint Maarten

Article 16 of Directive 2011/16/EU

"Disclosure of information and documents

1. Information communicated between Member States in any form pursuant to this Directive shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it. Such information may be used for the administration and enforcement of the domestic laws of the Member States concerning the taxes referred to in Article 2.

Such information may also be used for the assessment and enforcement of other taxes and duties covered by Article 2 of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures[1], or for the assessment and enforcement of compulsory social security contributions.

In addition, it may be used in connection with judicial and administrative proceedings that may involve penalties, initiated as a result of infringements of tax law, without prejudice to the general rules and provisions governing the rights of defendants and witnesses in such proceedings.

2. With the permission of the competent authority of the Member State communicating information pursuant to this Directive, and only in so far as this is allowed under the legislation of the Member State of the competent authority receiving the information, information and documents received pursuant to this Directive may be used for other purposes than those referred to in paragraph 1. Such permission shall be granted if the information can be used for similar purposes in the Member State of the competent authority communicating the information.

3. Where a competent authority of a Member State considers that information which it has received from the competent authority of another Member State is likely to be useful for the purposes referred to in paragraph 1 to the competent authority of a third Member State, it may transmit that information to the latter competent authority, provided that transmission is in accordance with the rules and procedures laid down in this Directive. It shall inform the competent authority of the Member State from which the information originates about its intention to share that information with a third Member State. The Member State of origin of the information may oppose such a sharing of information within 10 working days of receipt of the communication from the Member State wishing to share the information.

4. Permission to use information pursuant to paragraph 2, which has been transmitted pursuant to paragraph 3, may be granted only by the competent authority of the Member State from which the information originates.

5. Information, reports, statements and any other documents, or certified true copies or extracts thereof, obtained by the requested authority and communicated to the requesting authority in accordance with this Directive may be invoked as evidence by the competent bodies of the requesting Member State on the same basis as similar information, reports, statements and any other documents provided by an authority of that Member State."

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[1] OJ L 84, 31.3.2010, p. 1.